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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-215635

**DATE:** March 19, 1986

**MATTER OF:** Farmers Home Administration--Rural  
Housing Loans

**DIGEST:**

1. When Pub. L. No. 98-181 was enacted in 1983, it removed specific statutory authority of the Farmers Home Administration (FmHA) to establish interest rates within prescribed limits for two types of rural housing loans, but left intact FmHA's authority to continue to make such loans. Neither the statutory language nor the legislative history indicates that Congress intended to terminate these loan programs or to authorize FmHA to make loans on an interest-free basis. Accordingly, the Administrator has the discretion to establish whatever interest rates he believes would be appropriate for these programs.
2. In 1983, the Congress deleted a statutory provision which limited eligibility for loans under section 504 of the Housing Act of 1949 to individuals who could not qualify for loans under sections 502 or 503. However, FmHA regulations continue to reflect that limitation on eligibility. GAO recommends, pursuant to 31 U.S.C. § 720 that FmHA amend its regulations.

This decision is in response to a request from the Administrator of the Farmers Home Administration (FmHA) for our opinion concerning the continued status of and interest rates to be charged under two loan programs administered by FmHA.

The issue arose with the enactment of the Rural Housing Amendments of 1983, Pub. L. No. 98-181, 97 Stat. 1240, November 30, 1983. This legislation deleted provisions in FmHA's enabling legislation that expressly authorized the Secretary of Agriculture to set interest rates within prescribed limits for loans made under (1) the Rural Housing Loan and Grant Program, authorized by section 504 of the Housing Act of 1949, as amended (Housing Act) 42 U.S.C. § 1474, and (2) the Rural Housing Disaster loan program, authorized by section 521(a)(1)(G) of the Housing Act, 42 U.S.C. § 1490a(a)(1)(G). However, the statutory provisions authorizing FmHA to continue to make both types of loans remained in force.

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FmHA requests that we "ascertain Congressional intent" and determine whether authority for the two programs exists, absent interest rate-setting authority and, if so, what interest rates are authorized. For the reasons given below, it is our view that the Congress did not intend to terminate these programs when it enacted Pub. L. No. 98-181, nor did it authorize FmHA to make these loans on an interest-free basis. We think that the Administrator of FmHA has the discretion, in the absence of any existing statutory limitation, to establish such interest rates for those programs as he determines to be reasonable and appropriate.

### Section 504 Rural Housing Loans

#### Facts

Prior to its being amended by Pub. L. No. 98-181, section 504 of the Housing Act, 42 U.S.C. § 1474 (1982), authorized the Administrator of FmHA to provide financial assistance to low income owner-occupants of single family rural dwellings who lacked the repayment ability required to qualify for loans under section 502 of the Housing Act, 42 U.S.C. § 1472 (1982). The loans and/or grants the Administrator was authorized to make under this section were to improve or repair a dwelling to make it safe and sanitary and to remove health hazards.

Prior to its amendment by Pub. L. No. 98-181, section 502(a) of the Housing Act authorized the Administrator to set interest rates for borrowers under the section 504 loan program and other loan programs. It appeared at 42 U.S.C. § 1472(a)(1982) as follows:

"If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 [section 501 of the Act<sup>1/</sup>] of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, \* \* \* a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest, in

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<sup>1/</sup> Section 501 of the Housing Act, 42 U.S.C. § 1471, sets forth FmHA's basic authority to provide financial assistance to borrowers for the purpose of farm housing.

the case of applicants described in clauses (1) and (2) of section 1471(a) [section 501(a) of the Act] of this title, at a rate not to exceed 5 per centum per annum on the unpaid balance of principal, and, in the case of applicants described in clause (3) of section 1471(a) [section 501(a) of the Act] of this title and applicants under sections 1473 [section 503 of the Act] and 1474 [section 504 of the Act] of this title, at a rate not to exceed 4 per centum per annum on such unpaid balance." (Emphasis added.)

In addition to other substantive changes to section 504 of the Housing Act, section 504 of Pub. L. No. 98-181, 97 Stat. 1242, deleted the provision limiting eligibility to applicants who could not qualify for a loan under sections 502 or 503. Section 503(d) of Pub. L. No. 98-181, 97 Stat. 1241, also deleted all references in section 502(a) of the Housing Act to the Administrator's authority to set interest rates that had been contained in that section. This was accomplished by deleting everything after the words "making of the loan with interest" from section 502(a) as quoted above. As a result of this amendment, the Administrator lost his specific authority under section 502 to set interest rates for the programs that had been specified in that section. This only created a problem with respect to the section 504 program. The section 503 program apparently is no longer operational (according to information furnished to us informally by FmHA) and the Administrator's authority to set interest rates for the other programs referred to in section 502 had already been superseded by language contained in section 521(a)(1) of the Housing Act, 42 U.S.C. § 1490a(a) (1982).

By its terms, section 521(a)(1) covers loans under sections 502 and 517(a)<sup>2/</sup>, but it does not authorize the Administrator to set interest rates for rural housing loans made under section 504. There are no other provisions of the Housing Act which expressly authorize the Administrator of FmHA (or the Secretary of Agriculture) to establish

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<sup>2/</sup> Under section 517(a), 42 U.S.C. § 1487(a), the Administrator is authorized to insure loans that meet the requirements for section 502 direct loans.

interest rates up to a statutory maximum for section 504 loans. The absence of such explicit interest rate-setting authority gives rise to the Administrator's question about whether the Congress intended this program to continue.

#### DISCUSSION

We do not think that the Congress enacted Pub. L. No. 98-181 with the intent either to terminate the section 504 loan program or to continue the program on an interest-free basis. In our view, the numerous substantive amendments made to section 504 are completely consistent with an intent to continue the 504 loan program. Additional support for this conclusion is contained in the Act's legislative history which indicates that the Congress intended to expand and increase the eligibility of low income applicants for assistance under section 504. The Senate report on the bill that was the basis for this amendment stated the following:

"Section 504 amends Section 504 of the Housing Act of 1949 which authorizes the Secretary to make a grant or combined loan and grant to an eligible borrower, provided they cannot qualify for Section 502 or 503. The repairs made under this section must make the dwelling safe and sanitary and remove all health hazards. The cost for the repairs may not exceed \$5,000 if assistance is made in the form of a grant or \$7,500 if a combination loan and grant is made. The provision amends this section by authorizing the Secretary to make a loan, grant or combined loan and grant to an eligible very low income applicant provided that the improvements make the unit safer, more sanitary or remove health hazards. The Secretary is authorized to determine a maximum amount which is appropriate for both loans, grants and combined loans and grants. The Committee feels that assistance for rehabilitation should be available to eligible recipients regardless of their ability to qualify for a Section 502 loan in order to improve their housing conditions. \* \* \*" S. Rep. No. 142, 98th Cong., 1st Sess. 45 (1983).

We also note that since Pub. L. No. 98-181 was enacted, Congress has continued to provide funds for the section 504 loan program. For example, Congress approved \$24 million in the 1984 fiscal year and \$17 million in the 1985 fiscal year to be made available out of the Rural Housing Insurance Fund for section 504 loans. See S. Rep. No. 566, 98th Cong., 2nd Sess. 66-68 (1984). (Pub. L. No. 98-473, § 101(a), 98 Stat. 1837, October 12, 1984, incorporates by reference the bill covered by this report.)

The question remains as to what interest rate, if any, is now authorized under the section 504 loan program. We note that after Pub. L. No. 98-181 was enacted, FmHA did not change the 1 percent interest rate that was in effect for all section 504 loans when Pub. L. No. 98-181 was passed. See 7 C.F.R. § 1944.462(a) (1983) and (1985). Although this was less than the maximum interest rate the Administrator could have set under the old section 502, which authorized a section 504 interest rate of "not to exceed 4 percent", the Administrator certainly had statutory authority to establish a 1 percent rate.

While we recognize that FmHA is not legally required to continue to use the interest rate that was in effect when Pub. L. No. 98-181 was enacted, we have no objection to FmHA's continued use of a 1 percent interest rate (or any other rate it wishes to establish) for section 504 loans. First, we do not believe that Congress intended for FmHA to make interest-free loans under section 504. As a general rule we would be reluctant to conclude that the Federal Government could make loans to borrowers on an interest-free basis unless the intent of Congress to authorize such interest-free loans was clearly indicated. In this case, there is no such indication in Pub. L. No. 98-181, its legislative history, or elsewhere in the Housing Act.

Moreover, the legislative history of FmHA's 1985 fiscal year appropriation demonstrates that Congress knew that FmHA was continuing to use the 1 percent interest rate for section 504 loans after Pub. L. No. 98-181 was enacted. See S. Rep. No. 566, id. 68.

Second, in our view, the principal result of the deletions made by Pub. L. No. 98-181 was to remove all the statutory restrictions on the maximum rate of interest that the Secretary could charge for new loans made under section 504 of the Housing Act of 1949. There is case precedent for upholding an agency's discretionary authority to set interest rates for a loan program so as to best effectuate

the underlying intent of Congress, even though the interest rate the agency establishes may not be expressly authorized by the statutory language. See 53 Comp. Gen. 422 (1973).

Accordingly, we think that the FmHA would not be legally prohibited from revising its regulations to charge section 504 borrowers a higher rate of interest (greater than the present 1 percent rate), even if the new rate exceeds the abolished 4 percent ceiling. We are not here commenting on the advisability of such a change, but note only that the decision is legally within the Administrator's discretion.

In connection with the Administrator's authority to make loans and set interest rates under section 504, a related issue merits consideration. While the specific limitation that had been contained in section 504 restricting eligibility to applicants that could not qualify for loans under sections 502 or 503, was deleted by Pub. L. No. 98-181, FmHA's regulations continue to limit eligibility for section 504 loans to individuals that could not qualify for a loan under section 502. See 7 C.F.R. §§ 1944.451 and 1944.456 (1985). The legislative history indicates that Congress amended section 504 with the specific objective of making assistance under section 504 available to eligible recipients "regardless of their ability to qualify for section 502 loans in order to improve their housing conditions." See S. Rep. No. 142, 98th Cong., 1st Sess. (1983), reprinted in 1983 U.S. Code Cong. and Ad. News 1816. Accordingly, FmHA should modify these regulations to conform with the current statutory language and legislative intent.

### Rural Housing Disaster Loans

#### FACTS

FmHA's letter to us states that Rural Housing Disaster (RHD) loans are authorized by section 521(a)(1)(G) of the Housing Act, 42 U.S.C. § 1490a(a)(1)(G). This provision, which was not amended by Pub. L. No. 98-181, reads as follows:

"Interest on loans under section 502 or 517(a) to victims of a natural disaster shall not exceed the rate which would be applicable to such loans under section 502 without regard to this section."

Rural Housing Disaster loans are, in fact, one type of loan authorized by sections 502 and 517(a). Section 521(a)(1)(G) authorizes a special interest rate for housing loans made under sections 502 or 517(a) to victims of natural disasters.

Since before Pub. L. No. 98-181 was passed, all RHD loans have been insured loans made under section 517(a) rather than section 502. Prior to enactment of Pub. L. No. 98-181, section 517(a)(1) authorized the Administrator to establish an interest rate on insured loans to low or moderate income borrowers, which includes all insured RHD loans, of "not to exceed 5 per centum per annum." In accordance with this statutory authority, FmHA established a 5 percent interest rate for RHD-insured loans that was not changed after Pub. L. No. 98-181 was enacted. See 7 C.F.R. § 1944.40(c) (1983) and (1985).

When Pub. L. No. 98-181 was enacted, it deleted subsection 517(a)(1) which had authorized the Administrator to establish the interest rate on insured loans of not to exceed 5 percent. This did not create a problem with respect to other (non-RHD) insured loans since they were already covered by section 521(a)(1). However, since section 521(a)(1)(G) exempts RHD loans from the interest rate setting authority in section 521(a)(1), removal of section 517(a)(1) authority eliminated the only provision in the Housing Act that expressly authorized the Administrator to set interest rates for RHD-insured loans.<sup>3/</sup>

#### DISCUSSION

Our conclusion with respect to FmHA's authority to continue to make RHD loans is essentially the same as our

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<sup>3/</sup> As explained in the first portion of this decision, any authority the Administrator might have had under section 502 to set interest rates for RHD loans within statutorily prescribed limits would also have been lost due to the amendment of that section by Pub. L. No. 98-181.

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conclusion concerning the section 504 loan program. That is, there is nothing in the statute or its legislative history to indicate that Congress enacted Pub. L. No. 98-181 with the intent of terminating FmHA's authority to make RHD loans and to charge interest on such loans.

While the Administrator's express statutory authority to establish a special interest rate for RHD-insured loans was deleted, it appears that this may have been done inadvertently. This is indicated by the fact that section 511(c) of Pub. L. No. 98-181 amended section 517(a)(1) of the Housing Act to extend the Administrator's authority under that subsection, including his authority to set interest rates for insured RHD loans, from November 30, 1983, when it was due to expire, to September 30, 1985. Then, inexplicably, section 514(a) of Pub. L. No. 98-181 deleted the "just" extended 517(a)(1) provision in its entirety, thereby creating the situation we are attempting to resolve.

In addition, we note that even after section 502 of the Housing Act, 42 U.S.C. § 1472, was amended by Pub. L. No. 98-181 to delete the authority of the Administrator to set specific rates of interest for various loan programs, that section continues to refer, as a general matter, to the assessment of interest on such loans. This supports the conclusion that FmHA should continue to charge interest for RHD loans since section 521(a)(1)(G) provides that the interest rate for RHD loans is to be established under section 502.

Accordingly, we do not believe that Congress intended to terminate FmHA's authority to make RHD loans and to charge interest thereon. In the absence of any provision governing the specific interest rate FmHA can establish for such loans, it is our view that the Administrator has the discretionary authority to establish whatever interest rate he believes would be appropriate for RHD-insured loans. This, of course, includes the authority not to change the current 5 percent interest rate for such loans that was in effect when Pub. L. No. 98-181 was enacted.

*for* Milton J. Fowler  
Comptroller General  
of the United States